

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
April 25, 2003 Session

STATE OF TENNESSEE, EX REL. WANDA THEUS
v.
BERNARD WOODS

An Appeal from the Juvenile Court for Shelby County
No. K8778 Harold Horne, Special Judge

No. W2002-00342-COA-R3-JV - Filed September 12, 2003

This is a paternity suit involving the State's request to establish child support payments from the defendant father. The mother filed suit to establish paternity and to have the child's name changed. The evidence established that the defendant was the child's father. At the hearing before the juvenile court referee, the mother requested that child support not be set, because the father was voluntarily providing support. The State objected, insisting that child support payments be established under the guidelines, because the mother's right to such support was assigned to the State when she accepted state financial assistance. The juvenile court referee declined to establish child support, because neither the mother nor the father wanted support payments to be set. The State requested a hearing on the matter before a juvenile court judge. At a brief hearing, the juvenile court judge summarily affirmed the conclusion of the referee, citing the fact that neither parent wanted support to be set. The State now appeals. We reverse the decision of the juvenile court and remand with instructions to conduct a *de novo* evidentiary hearing, pursuant to Tennessee Code Annotated § 37-1-107(e).

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court is
Reversed and Remanded**

HOLLY M. KIRBY, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S., and DAVID R. FARMER, J., joined.

Paul G. Summers, Attorney General & Reporter, and Stuart F. Wilson-Patton, Senior Counsel for the Office of the Attorney General, Nashville, Tennessee, for the appellant, State of Tennessee on behalf of Wanda Theus.

Bernard Woods, appellee, *pro se*.

OPINION

On September 2, 1999, the State of Tennessee, on behalf of Wanda Theus (“Mother”), filed a petition in the juvenile court below to establish the parentage of Mother’s minor son, Bernard Rashad Theus (born July 22, 1994), against Defendant/Appellee Bernard Woods (“Father”). On June 12, 1999, the parties participated in genetic DNA testing to determine parentage. The test results established a 99.996% probability that Father was the biological father of the minor child.

On July 10, 2001, a hearing on the matter was conducted before the Honorable Herbert Lane, a juvenile court referee. At that hearing, the referee determined that Father was the biological father of the child, and ordered that the child should have Father’s surname. At the time, Mother stated that she wanted only to establish paternity, and that she was not seeking any child support from Father. Mother and Father indicated that they were “staying together,” that Father was supporting the child, and that they wanted to continue their private support arrangement rather than to have the court set support. Mother represented to the referee that she was not receiving any benefits from the State. David Ferguson (“Ferguson”), the Child Support Director and Attorney for the State, indicated that, because this was a Title IV-D case, the State wanted child support to be established. Based on the preference of Mother and Father, the juvenile court referee did not set child support payments, but stated that support would be “handled outside of Court by agreement of the parties.” The referee entered findings and recommendations which stated, among other things, that Father is the child’s natural father, that the child’s name should be changed accordingly, and “that child support payments be deferred at this time by agreement of the parties.” On the same day, July 10, the referee’s findings and recommendations were confirmed by the juvenile court judge.

On July 17, 2001, Ferguson, on behalf of the State, filed a request for a hearing before the juvenile court judge regarding the July 10, 2001 ruling. An order was entered granting the request for a hearing, and finding that “the Petitioner, [State of Tennessee, ex rel. Wanda Theus,] a proper party in the matter, has requested a hearing by the Judge as prescribed by law.” On October 25, 2001, a brief hearing was held before the Honorable Harold Horne, sitting as Special Juvenile Court Judge. Although the State insisted that child support payments be set, the juvenile court judge rejected the request because the parties had asked that support not be set. On the same date, the juvenile court entered an order confirming the referee’s decision of July 10, 2001, and dismissing the State’s petition to rehear.

On November 21, 2001, the State filed a motion to alter or amend the juvenile court’s October 25, 2001 order dismissing the petition to rehear and confirming the referee’s decision. The State alleged that Mother was receiving or had received TANF¹ (public assistance) benefits from the State, and that she had assigned her right to child support to the State, pursuant to Tennessee Code

¹TANF is an acronym for Temporary Assistance for Needy Families.

Annotated § 71-3-124(a).² Therefore, the State maintained, Mother could waive neither her right to child support nor her child's right to support. The State argued further that Mother could not object to the setting of support because she needed ongoing child support from Father in order to take care of herself and her child without public assistance. The State's motion also asked that a guardian ad litem be appointed to protect the interests of the child. On January 10, 2002, the juvenile court held another very brief hearing³ on the State's motion to alter or amend, summarily denying the State's request because neither Mother nor Father had signed the motion. The juvenile court stated that "the Court's not going to order any support of the parties if they're not coming down here to ask for it." An order was entered consistent with the oral ruling, reconfirming the July 10, 2001 decision not to set child support. From that order, the State now appeals.

On appeal, the State argues that the trial court erred in refusing to set either retroactive or current child support after paternity had been established pursuant to Tennessee Code Annotated § 36-2-311(a)(11). The State asserts that the juvenile court erred in rejecting its claims on the basis that neither of the parents had requested that support be set. The State asks this Court to remand the cause to the juvenile court to conduct an evidentiary hearing on the matter as is required by Tennessee Code Annotated § 37-1-107(e).⁴

We review the case *de novo* upon the record with a presumption of correctness in the findings of fact by the trial court. *See* Tenn. R. App. P. 13(d). We review questions of law *de novo* with no such presumption of correctness in the trial court's decision. *See State v. Levandowski*, 955 S.W.2d 603, 604 (Tenn. 1997).

The gravamen of the State's argument on appeal is that, because Mother was receiving or had been receiving financial assistance from the State prior to the establishment of Father's paternity, the State was entitled to request that child support be established. The State argues that Mother's

²That statute provides in pertinent part:

(a)(1) Each applicant or recipient who receives or authorizes payment of public or temporary assistance pursuant to Title IV-A or IV-E of the Social Security Act or any successor program providing temporary assistance or foster care or adoption assistance shall be deemed to have assigned to the state any rights to support from any other person such applicant or recipient may have:

(A) In the applicant's own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid; and

(B) Which have accrued at the time such assignment is executed.

Tenn. Code Ann. § 71-3-124(a) (Supp. 2002).

³It appears from the record and representations of counsel that this "hearing" lasted less than one minute.

⁴Father did not file an appellate brief with this court, and he did not appear at oral argument. Therefore, our decision is based on the record and on the State's arguments made in its brief and at the oral presentation. *See State ex rel. Patterson v. French*, No. W2000-02668-COA-R3-CV, 2002 WL 1349498, at *2 n.3 (Tenn. Ct. App. Feb. 5, 2002).

right to child support from Father was deemed to have been assigned to the State pursuant to Tennessee Code Annotated § 71-3-124(a), and that the assignment includes the right to initiate a support action and to recover any payments ordered. The State contends that, even if Mother and her child had never received public assistance benefits from the State, upon her application for state child support services, the State had the right to initiate a support action under Title IV-D of the Social Security Act, Tennessee Code Annotated § 71-3-124(c)(1) and (2). These statutory provisions state:

(c)(1) Upon the filing of an application by an individual not otherwise eligible for support services under this section, the department may initiate support actions for an individual, in accordance with the provisions of Title IV-D of the Social Security Act, as amended.

(2) The department or any entity, public or private, which contracts with the department to establish paternity or to establish, modify or enforce child or spousal support pursuant to the provisions of Title IV-D of the Social Security Act shall have authority and standing to file any legal actions to establish paternity or to establish, modify or enforce child or spousal support in any judicial or administrative proceeding on behalf of the department and the state for persons who have assigned rights of support to the department pursuant to this section, or who have otherwise applied for child or spousal support services pursuant to the provisions of subdivision (1) or Title IV-D of the Social Security Act. The department or its contractors may file such legal actions without the necessity of intervening in an existing action or naming the state as a party to the action. *The department or its contractors shall not be required to provide proof that the obligor, the obligee or the child has applied for or is receiving Title IV-D child support services in order to meet the requirements for conducting Title IV-D child support judicial or administrative actions.*

Tenn. Code Ann. § 71-3-124(c)(1)-(2) (Supp. 2002) (emphasis added).

The State notes that, under Tennessee statutes, it was entitled to a full evidentiary hearing before the juvenile court judge. Tennessee Code Annotated § 37-1-107(e) provides:

(e) Any party may, within five (5) days [after a determination by a referee], excluding nonjudicial days, file a request with the court for a hearing by the judge of the juvenile court. The judge may, on the judge's own motion, order a rehearing of any matter heard before a referee, and shall allow a hearing if a request for such hearing is filed as herein prescribed. Unless the judge orders otherwise, the recommendation to the referee shall be the decree of the court pending a rehearing.

Tenn. Code Ann. § 37-1-107(e) (2001). Thus, under the statute, upon the request of any party, the juvenile court judge must conduct a *de novo* hearing from the referee's decision. *See Kelly v. Evans*, 43 S.W.3d 514, 515 (Tenn. Ct. App. 2000).

It is undisputed that the State requested a hearing before the juvenile court below regarding the referee's report and recommendation. Ostensibly, the State was granted such a hearing, but was

given no opportunity to submit proof to establish the grounds for its request. At the October 25, 2001 hearing, the juvenile court judge rejected the State's claim at the outset because the Mother and Father had requested that support not be set. Similarly, at the January 2002 hearing on the State's motion to alter or amend, the juvenile court judge stated that "the court's not going to order any support of the parties if they're not coming down here to ask for it." Thus, the juvenile court merely deferred to the findings and conclusions of the referee without permitting the State to prove that it was entitled to have child support set. Under those circumstances, the juvenile court clearly failed to fulfill its statutory obligation to conduct a *de novo* evidentiary hearing on the matter under Tennessee Code Annotated § 37-1-107(e). Accordingly, the decision of the juvenile court must be reversed and the cause remanded with instructions for the juvenile court judge to conduct a *de novo* hearing.

The decision of the juvenile court is reversed and the cause is remanded for further proceedings not inconsistent with this Opinion. Costs are to be assessed to the Appellee, Bernard Woods, for which execution may issue, if necessary.

HOLLY M. KIRBY, JUDGE